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HOUSE BILL 758

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Janice E. Arnold-Jones

AN ACT

RELATING TO MOTOR VEHICLES; PROHIBITING THE USE OF NUISANCE
ORDINANCES TO ADDRESS MOTOR VEHICLE VIOLATIONS; AUTHORIZING THE
USE OF AUTOMATED ENFORCEMENT SYSTEMS FOR THE ISSUANCE OF
CITATIONS FOR CERTAIN VIOLATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 3-18-17 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-17-14, as amended) is amended to read:

"3-18-17. NUISANCES AND OFFENSES--REGULATION OR
PROHIBITION.--A municipality, including a home rule
municipality that has adopted a charter pursuant to Article 10,
Section 6 of the constitution of New Mexico, may by ordinance:

A. define a nuisance, abate a nuisance and impose
penalties upon a person who creates or allows a nuisance to
exist; provided that ~~[for a municipality with a population of~~

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1 ~~200,000 or greater as of the last decennial census, the~~
2 ~~penalties or fines and costs or fees imposed by an ordinance~~
3 ~~for failure to obey a traffic sign or signal, including a red~~
4 ~~light violation, or for a speeding offense or violation, shall~~
5 ~~be subject to the following criteria:~~

6 ~~(1) the total amount of assessed penalties,~~
7 ~~finer, fees and costs for each offense or violation shall not~~
8 ~~exceed seventy-five dollars (\$75.00);~~

9 ~~(2) each month, or other period set by~~
10 ~~contract, the municipality shall retain from the gross total~~
11 ~~amount of penalties, fines, fees and costs assessed and~~
12 ~~collected that month or period an amount subject to audit that~~
13 ~~is equal to the setup, maintenance, support and processing~~
14 ~~services fees charged for that month or period pursuant to~~
15 ~~contractual terms, by a vendor providing systems and services~~
16 ~~that assist the municipality in imposing penalties or fines and~~
17 ~~costs or fees as provided in this subsection;~~

18 ~~(3) less the retention authorized in Paragraph~~
19 ~~(2) of this subsection, the net total amount assessed in fines,~~
20 ~~fees and costs by the municipality shall be distributed to the~~
21 ~~administrative office of the courts, of which ten percent of~~
22 ~~the net total amount assessed shall be credited to DWI drug~~
23 ~~court programs and ninety percent of the net total amount~~
24 ~~assessed shall be transferred to the New Mexico finance~~
25 ~~authority for deposit into the metropolitan court bond~~

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1 ~~guarantee fund; and~~

2 ~~(4) in fiscal year 2009, and annually~~
3 ~~thereafter, the municipality shall cause an audit of the~~
4 ~~program to be conducted by the state auditor or an independent~~
5 ~~auditor selected by the state auditor] the definition,~~
6 abatement and imposition shall not address a matter for which
7 the municipality may exercise authority pursuant to the Motor
8 Vehicle Code;

9 B. regulate or prohibit any amusement or practice
10 that tends to annoy persons on a street or public ground; and

11 C. prohibit and suppress:

12 (1) gambling and the use of fraudulent devices
13 or practices for the purpose of obtaining money or property;

14 (2) the sale, possession or exhibition of
15 obscene or immoral publications, prints, pictures or
16 illustrations;

17 (3) public intoxication;

18 (4) disorderly conduct; and

19 (5) riots, noises, disturbances or disorderly
20 assemblies in any public or private place."

21 Section 2. A new section of the Motor Vehicle Code is
22 enacted to read:

23 "[NEW MATERIAL] AUTOMATED ENFORCEMENT SYSTEM CITATIONS.--A
24 state or local law enforcement agency may use an automated
25 enforcement system to issue citations for alleged violations of
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1 state or municipal laws relating to motor vehicles that are
2 punishable as a misdemeanor."

3 Section 3. Section 66-1-4.21 NMSA 1978 (being Laws 1998
4 (1st S.S.), Chapter 10, Section 9) is amended to read:

5 "66-1-4.21. ADDITIONAL DEFINITIONS.--As used in the Motor
6 Vehicle Code:

7 A. "automated enforcement system" means an
8 electronic system consisting of cameras and a vehicle sensor
9 that automatically records images of each vehicle whose driver
10 violates a traffic law at an intersection or in a school zone
11 by not obeying a standard traffic-control device;

12 [~~A.~~] B. "evidence of registration" means any
13 documentation issued by the department identifying a motor
14 carrier vehicle as being registered with New Mexico or
15 documentation issued by another state pursuant to the terms of
16 a multistate agreement on registration of vehicles to which
17 this state is a party identifying a motor carrier vehicle as
18 being registered with that state; provided that evidence of
19 payment of the weight distance tax and permits obtained under
20 either the Special Fuels Supplier Tax Act or Trip Tax Act are
21 not "evidence of registration";

22 [~~B.~~] C. "fleet" means one or more motor carrier
23 vehicles, either commercial or noncommercial but not mixed,
24 that are operated in this and at least one other jurisdiction;

25 [~~C.~~] D. "motor carrier" means any person or firm

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1 that owns, controls, operates or manages any motor vehicle with
2 gross vehicle weight of twelve thousand pounds or more that is
3 used to transport persons or property on the public highways of
4 this state;

5 ~~[D.]~~ E. "one-way rental fleet" means two or more
6 vehicles each having a gross vehicle weight of under twenty-six
7 thousand one pounds and rented to the public without a driver;

8 ~~[E.]~~ F. "preceding year" means a period of twelve
9 consecutive months fixed by the department, which period is
10 within the sixteen months immediately preceding the
11 commencement of the registration or license year for which
12 proportional registration is sought. The department, in fixing
13 that period, shall make it conform to the terms, conditions and
14 requirements of any applicable agreement or arrangement for the
15 proportional registration of vehicles;

16 ~~[F.]~~ G. "properly registered" means bearing the
17 lawfully issued and currently valid evidence of registration of
18 this or another jurisdiction, regardless of the owner's
19 residence, except in those cases where the evidence has been
20 procured by misrepresentation or fraud; and

21 ~~[G.]~~ H. "public highway" means every way or place
22 generally open to the use of the public as a matter of right
23 for the purpose of vehicular travel, even though it may be
24 temporarily closed or restricted for the purpose of
25 construction, maintenance, repair or reconstruction."

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1 Section 4. Section 66-7-9 NMSA 1978 (being Laws 1978,
2 Chapter 35, Section 379, as amended) is amended to read:

3 "66-7-9. POWERS OF LOCAL AUTHORITIES.--

4 A. Subject to the limitation in Subsection D of
5 this section, the provisions of the Motor Vehicle Code shall
6 not be deemed to prevent local authorities, with respect to
7 streets and highways under their jurisdiction and within the
8 reasonable exercise of the police power, from:

9 (1) regulating the standing or parking of
10 vehicles;

11 (2) regulating traffic by means of police
12 officers or traffic-control signals;

13 (3) regulating or prohibiting processions or
14 assemblages on the highways;

15 (4) designating particular highways as one-way
16 highways and requiring that all vehicles thereon be moved in
17 one specific direction;

18 (5) regulating the speed of vehicles in public
19 parks;

20 (6) designating any highway as a through
21 highway and requiring that all vehicles stop before entering or
22 crossing it or designating any intersection as a stop
23 intersection or a yield intersection and requiring all vehicles
24 to stop or yield at one or more entrances to the intersection;

25 (7) restricting the use of highways as

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1 authorized in the Motor Vehicle Code;

2 (8) regulating the operation of bicycles and
3 requiring their registration and licensing, including the
4 requirement of a registration fee;

5 (9) regulating or prohibiting the turning of
6 vehicles, or specified types of vehicles, at intersections;

7 (10) altering the maximum speed limits as
8 authorized in the Motor Vehicle Code;

9 (11) adopting other traffic regulations as
10 specifically authorized by the Motor Vehicle Code;

11 (12) regulating the operation of snowmobiles
12 on public lands, waters and property under their jurisdiction
13 and on streets and highways within their boundaries by
14 resolution or ordinance of their governing bodies and by giving
15 appropriate notice, if such regulation is not inconsistent with
16 the provisions of Sections [~~66-9-1 through 66-9-13~~] 66-3-1001
17 through 66-3-1016 NMSA 1978; [~~or~~]

18 (13) regulating the operation of golf carts on
19 public lands and property under their jurisdiction and on
20 streets and roads within their boundaries by resolution or
21 ordinance of their governing bodies and requiring their
22 registration and licensing, including the payment of a
23 registration fee; provided, the resolution or ordinance shall:

24 (a) not permit operation of a golf cart
25 on any state highway;

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1 (b) require that the golf cart be in
2 compliance with Section 66-3-887 NMSA 1978; and

3 (c) not be inconsistent with the
4 provisions of Sections 66-3-1001 through 66-3-1016 NMSA 1978;
5 or

6 (14) regulating traffic and issuing citations
7 by means of an automated enforcement system at intersections or
8 in school zones.

9 B. ~~[Nø]~~ A local authority shall not erect or
10 maintain any stop sign or traffic-control signal at any
11 location so as to require the traffic on any state highway to
12 stop or yield before entering or crossing any intersecting
13 highway unless approval in writing has first been obtained from
14 the state transportation commission.

15 C. ~~[Nø]~~ An ordinance or regulation enacted under
16 Paragraph (4), (5), (6), (7), ~~[øø]~~ (10) or (14) of Subsection A
17 of this section shall not be effective until signs giving
18 notice of the local traffic regulations are posted upon or at
19 the entrances to the highway or part thereof affected as may be
20 most appropriate.

21 D. A local authority shall not use its power
22 pursuant to Section 3-18-17 NMSA 1978 to address traffic laws,
23 crimes, penalties and procedures that are provided in or
24 similar to the provisions of the Motor Vehicle Code."

25 Section 5. Section 66-8-117 NMSA 1978 (being Laws 1978,
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1 Chapter 35, Section 525, as amended) is amended to read:

2 "66-8-117. PENALTY ASSESSMENT MISDEMEANORS--OPTION--
3 EFFECT.--

4 A. Unless a warning notice is given, at the time of
5 making an arrest for any penalty assessment misdemeanor the
6 arresting officer shall offer the alleged violator the option
7 of accepting a penalty assessment. The violator's signature on
8 the penalty assessment notice constitutes an acknowledgment of
9 guilt of the offense stated in the notice.

10 B. In the case of an automated enforcement system
11 citation issued by a law enforcement agency, the violator shall
12 have the option of accepting the penalty assessments or
13 appearing in court. The violator's signature on the penalty
14 assessment notice constitutes an acknowledgment of guilt of the
15 offense stated in the notice.

16 [~~B.~~] C. Except for penalty assessments made under a
17 municipal program authorized by Section 66-8-130 NMSA 1978,
18 payment of any penalty assessment must be made by mail to the
19 division within thirty days from the date of arrest or notice
20 of an automated enforcement system citation. Payments of
21 penalty assessments are timely if postmarked within thirty days
22 from the date of arrest or notice of an automated enforcement
23 system citation. The division may issue a receipt when a
24 penalty assessment is paid by currency, but checks tendered by
25 the violator upon which payment is received are sufficient

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1 receipt.

2 [G. ~~No~~] D. A record of any penalty assessment
3 payment is not admissible as evidence in any court in any civil
4 action."

5 Section 6. Section 66-8-124 NMSA 1978 (being Laws 1961,
6 Chapter 213, Section 3, as amended) is amended to read:

7 "66-8-124. ARRESTING OFFICER TO BE IN UNIFORM.--

8 A. [~~No~~] A person shall not be arrested for
9 violating the Motor Vehicle Code or other law relating to motor
10 vehicles punishable as a misdemeanor except by a commissioned,
11 salaried peace officer who, at the time of arrest, is wearing a
12 uniform clearly indicating the peace officer's official status.

13 B. Notwithstanding the provisions of Subsection A
14 of this section, a municipality may provide by ordinance that
15 uniformed private security guards may be commissioned by the
16 local police agency to issue parking citations for violations
17 of clearly and properly marked fire zones and access zones for
18 persons with significant mobility limitation. Prior to the
19 commissioning of any security guard, the employer of the
20 security guard shall agree in writing with the local police
21 agency to the commissioning of the employer's security guard.
22 The employer of any security guard commissioned under the
23 provisions of this section shall be liable for the actions of
24 that security guard in carrying out the security guard's duties
25 pursuant to that commission. Notwithstanding the provisions of

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1 the Tort Claims Act, private security guards commissioned under
2 this section shall not be deemed public employees under that
3 act.

4 C. Notwithstanding the provisions of Subsection A
5 of this section, a state or local law enforcement agency may
6 use an automated enforcement system to issue citations for
7 alleged violations of state or municipal laws relating to motor
8 vehicles that are punishable as a misdemeanor."

9 Section 7. Section 66-8-126 NMSA 1978 (being Laws 1978,
10 Chapter 35, Section 534) is amended to read:

11 "66-8-126. FAILURE TO OBEY NOTICE TO APPEAR.--

12 A. It is a misdemeanor for any person to violate
13 [his] that person's written promise to appear in court given in
14 response to an automated enforcement system citation or to an
15 officer upon issuance of a uniform traffic citation regardless
16 of the disposition of the charge for which the citation was
17 issued.

18 B. A written promise to appear in court may be
19 complied with by appearance of counsel."

20 Section 8. Section 66-8-128 NMSA 1978 (being Laws 1978,
21 Chapter 35, Section 536, as amended) is amended to read:

22 "66-8-128. UNIFORM TRAFFIC CITATION.--

23 A. The department shall prepare a uniform traffic
24 citation containing at least the following information:

25 (1) an information section, serially numbered
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1 and containing spaces for the name, address, city and state of
2 the individual charged; the individual's physical description,
3 age and sex; the registration number, year and state of the
4 vehicle involved and its make and type; the state and number of
5 the individual's driver's license; the specific section number
6 and common name of the offense charged under the NMSA 1978 or
7 of local law; the date and time of arrest; the arresting
8 officer's signature and identification number; and the
9 conditions existing at the time of the violation;

10 (2) a notice to appear; and

11 (3) a penalty assessment notice with a place
12 for the signature of the violator agreeing to pay the penalty
13 assessment prescribed.

14 B. The department shall prescribe how the uniform
15 traffic citation form may be used as a warning notice.

16 C. The department shall prescribe the size and
17 number of copies of the paper version of the uniform traffic
18 citation and the disposition of each copy. The department may
19 also prescribe one or more electronic versions of the uniform
20 traffic citation, and these electronic versions may be used in
21 the issuance of citations.

22 D. ~~[Any]~~ An entity that wishes to submit uniform
23 traffic citations required to be submitted to the department by
24 electronic means ~~[must]~~ shall secure the prior permission of
25 the department.

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1 E. The department shall prescribe the form and
2 content of a uniform automated enforcement system citation and
3 the procedures by which the citation may be issued and
4 processed."

5 Section 9. Section 66-8-130 NMSA 1978 (being Laws 1978,
6 Chapter 35, Section 538, as amended) is amended to read:

7 "66-8-130. ALL TRAFFIC CITATIONS TO CONFORM--
8 MUNICIPALITIES MAY PASS ORDINANCE TO ESTABLISH SIMILAR
9 PROGRAM.--

10 A. The uniform traffic citation or the uniform
11 automated enforcement system citation shall be used, as
12 applicable, by all state and local agencies enforcing laws and
13 ordinances relating to motor vehicles. Any municipality may,
14 by passage of an ordinance, establish a municipal penalty
15 assessment program similar to that established in Sections
16 66-8-116 through 66-8-117 NMSA 1978 for violations of
17 provisions of the Motor Vehicle Code. Every municipality that
18 has adopted an ordinance to establish a penalty assessment
19 program shall assess on all penalty assessment misdemeanors
20 after January 1, 1984, in addition to the penalty assessment, a
21 penalty assessment fee of ten dollars (\$10.00) to be deposited
22 in a special fund in the municipal treasury for use by the
23 municipality only for municipal jailer training; for the
24 construction planning, construction, operation and maintenance
25 of the municipal jail; for paying the costs of housing that

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1 municipality's prisoners in other detention facilities in the
2 state; or for complying with match or contribution requirements
3 for the receipt of federal funds relating to jails. Such a
4 municipal program shall be limited to violations of municipal
5 traffic ordinances.

6 B. All penalty assessments under a municipal
7 program authorized by this section shall be processed by the
8 municipal court, and all fines and fees collected shall be
9 deposited in the treasury of the municipality. A copy of each
10 penalty assessment processed shall be forwarded to the division
11 within ten days of completion of local processing for posting
12 to the driver's record. With the prior approval of the
13 director, the required information may be submitted to the
14 division by electronic means in lieu of forwarding copies of
15 the penalty assessments.

16 C. Each agency shall provide itself with copies
17 conforming exactly in size and format with the uniform traffic
18 citation prescribed by the director, and any alterations to
19 conform with local conditions must be approved by the
20 director."

21 Section 10. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2009.

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